

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,	)	CASE NO: 1:20-CR-01687-KWV
	)	
Plaintiff,	)	CRIMINAL
	)	
vs.	)	Albuquerque, New Mexico
	)	
STEVE BARTON,	)	Friday, January 8, 2021
	)	
Defendant.	)	(12:10 p.m. to 12:39 p.m.)

PLEA HEARING

BEFORE THE HONORABLE LAURA FASHING,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	SAMUEL A. HURTADO, ESQ. U.S. Attorney's Office District of New Mexico P.O. Box 607 Albuquerque, NM 87103
For Defendant:	LEON ENCINIAS, ESQ. Leon Felipe Encinias Attorney at Law 1412 Lomas Blvd. NW Albuquerque, NM 87104
Court Reporter:	Recorded; ABQ Zoom
Clerk:	N. Maestas
Transcribed By:	Exceptional Reporting Services, Inc. P.O. Box 8365 Corpus Christi, TX 78468 361 949-2988

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1                   **Albuquerque, New Mexico; Friday, January 8, 2021; 12:10 p.m.**

2                   **(Appearances via Zoom Web Conference)**

3                   **Call to Order**

4                   **THE CLERK:** The *United States versus Steve Barton*.

5                   **THE COURT:** May I have appearances, please?

6                   **MR. HURTADO:** Samuel Hurtado for the United States.

7                   **MR. ENCINIAS:** Good afternoon, Your Honor, Leon  
8 Encinias for Steve Barton who is appearing via video.

9                   **THE COURT:** All right, good afternoon to all of you.

10                  Mr. Barton, I know you have been waiting for quite  
11 some time this morning so I appreciate your patience. I feel  
12 like every time we have these hearings, especially when we're  
13 doing them by video, that it takes a little bit longer than I  
14 expect, but we're finally to your case. Somebody has to be at  
15 the end of the docket and today it was you, so I appreciate  
16 your patience.

17                  **THE DEFENDANT:** You're welcome. Thank you for  
18 fitting me in.

19                  **THE COURT:** Okay. So, Mr. Barton, we obviously are  
20 conducting this hearing by video and the first thing I want to  
21 talk about is that it's my understand that at some point before  
22 this hearing, that actually was quite some time ago, you had  
23 the opportunity to speak with your lawyer about the fact that  
24 we would be conducting the hearing by video. Is that true?

25                  **THE DEFENDANT:** Yes, ma'am. Yes, Your Honor.

1                   **THE COURT:** And did he explain to you that the reason  
2 we're doing it this way is because of the COVID-19 pandemic and  
3 we're just trying to keep everybody as safe as possible?

4                   **THE DEFENDANT:** Yes, Your Honor.

5                   **THE COURT:** All right. I'm going to share with you a  
6 document that's on my screen. This document is entitled  
7 "Waiver of Personal Presence at Hearing." Do you see that  
8 there on the screen in front of you?

9                   **THE DEFENDANT:** Yes, Your Honor.

10                  **THE COURT:** Above the words "Defendant's signature"  
11 is a signature. Is that yours?

12                  **THE DEFENDANT:** Yes, ma'am. Yes, Your Honor.

13                  **THE COURT:** Did you understand that by signing this  
14 form you were giving up your right to be personally present in  
15 the courtroom for this hearing and that, instead, you have  
16 agreed to proceed by video?

17                  **THE DEFENDANT:** Yes, Your Honor.

18                  **THE COURT:** Did anybody threaten you to get you to  
19 sign this form or force you to sign it?

20                  **THE DEFENDANT:** No, Your Honor.

21                  **THE COURT:** All right. I find that you have  
22 knowingly and voluntarily waived your right to be personally  
23 present in the courtroom for this hearing and that you,  
24 instead, have agreed to proceed by video.

25                  Now the next thing I need to talk about, and this is

1 really for the lawyers, I think they touched on it a little bit  
2 yesterday, but I'd like to put it on the record today as well,  
3 under this Court's Administrative Order and the CARES Act in  
4 order for me to go forward with a change of plea by video I  
5 need to find that the case cannot be further delayed without  
6 serious harm to the interest of justice, so I'm wondering if  
7 the attorneys can fill me in on why it's important to go  
8 forward with this hearing here today as opposed to waiting  
9 until sometime in the future when we might be able to do it in  
10 person, and I'll start with you, Mr. Encinias.

11                   **MR. ENCINIAS:** Your Honor, by my calculations the  
12 Guideline range is low. He's been in custody now just under  
13 two months. The COVID pandemic appears to be surging by all  
14 reports, we don't know when we can safely appear in person at  
15 any hearing in the courtroom. We're concerned that the delay  
16 may result in Mr. Barton serving more time than he really  
17 should.

18                   **THE COURT:** All right. Mr. Hurtado, do you have  
19 anything to add to that?

20                   **MR. HURTADO:** I agree with Mr. Encinias. Mr. Barton  
21 is entitled to a speedy resolution of the case and for that  
22 reason I would respectfully urge the Court to please proceed  
23 with this hearing. Thank you.

24                   **THE COURT:** All right. So based on the information  
25 that I have received here today, Mr. Barton, especially the

1 concern that if we were to delay this hearing it's possible  
2 that you could actually serve (indisc.) **(background voices,**  
3 **audio glitch)** than you'd be required to under normal  
4 circumstances. I think that that makes clear that this case  
5 cannot be further delayed without serious harm to the interest  
6 of justice and so I will go forward with your guilty plea, and  
7 your change of plea here today.

8 All right, so the next thing we need to talk about,  
9 Mr. Barton, is the fact that you do have the right to have a  
10 District Judge preside over your guilty plea. **(Background**  
11 **voices, audio glitch)** I'm a Magistrate Judge which is a level  
12 below a District Judge and I'm -- excuse me, is there something  
13 going in the background there in your room, Mr. Barton?

14 **THE DEFENDANT:** There -- I can close the door, Your  
15 Honor. I'm not sure what's going on up here.

16 **THE COURT:** All right. Thank you.

17 **MR. ENCINIAS:** It may be my office, Your Honor. I'll  
18 close the door as well.

19 **THE COURT:** Okay.

20 **THE DEFENDANT:** Okay, Your Honor, I'm good here.

21 **THE COURT:** Okay, I'm waiting for Mr. Encinias to  
22 close his door. I was just feeling like I was getting a lot of  
23 background noise and it was distracting.

24 **THE DEFENDANT:** And I was hearing it as well, thank  
25 you.

1                   **THE COURT:** Okay. So, Mr. Barton, I think I was in  
2 the middle of telling you that you do have the right to have a  
3 District Judge preside over your guilty plea. I am a  
4 Magistrate Judge which is a level below a District Judge. Your  
5 attorney, though, has provided me a form and, again, I'm going  
6 to share it with you, it's on my screen, you'll see it pop up  
7 on your screen.

8                   This form is entitled "Consent to Proceed Before a  
9 United States Magistrate Judge in a Felony Case." Do you see  
10 that there on the screen in front of you?

11                   **THE DEFENDANT:** Yes, Your Honor.

12                   **THE COURT:** Above the word "Defendant" is a  
13 signature. Is that yours?

14                   **THE DEFENDANT:** Yes, Your Honor.

15                   **THE COURT:** Now, did you understand that by signing  
16 this form you are giving up your right to have a District Judge  
17 preside over your guilty plea and I will preside instead?

18                   **THE DEFENDANT:** Yes, Your Honor.

19                   **THE COURT:** Did anybody threaten you to get you to  
20 sign this form or force you to sign it?

21                   **THE DEFENDANT:** No, Your Honor.

22                   **THE COURT:** All right. I find that you have  
23 knowingly and voluntarily waived your right to have a District  
24 Judge preside over your guilty plea with a full and complete  
25 understanding of the nature and effect of that waiver.

1                   All right, so, Mr. Hurtado, this may be a somewhat  
2 silly question, but I'll go ahead and ask it. I understand  
3 there is a victim in this case, has there been victim  
4 notification?

5                   **MR. HURTADO:** Yes, Your Honor, by way of the United  
6 States Secret Service they informed the United States that they  
7 agree with the Plea Agreement that is being proposed in this  
8 hearing. Thank you.

9                   **THE COURT:** All right, thank you.

10                  Could you please swear the Defendant, Ms. Maestas?

11                  **THE CLERK:** Please raise your right hand.

12                  (**Defendant sworn**)

13                  **THE DEFENDANT:** I do.

14                  **THE COURT:** All right, thank you, Mr. Barton, you may  
15 put your hand down.

16                  So I want to make sure you understand, Mr. Barton,  
17 that at this point you are under oath, you are required to tell  
18 me the truth. If you fail to tell me the truth you could be  
19 prosecuted for either perjury or false statement and the  
20 Government would be able to use anything you say against you.  
21 Do you understand that?

22                  **THE DEFENDANT:** Yes, Your Honor.

23                  **THE COURT:** All right. Could you please tell me your  
24 full name?

25                  **THE DEFENDANT:** Steven Wayne Barton.

1                   **THE COURT:** How old are you?

2                   **THE DEFENDANT:** Sixty-three.

3                   **THE COURT:** How far have you gone in school?

4                   **THE DEFENDANT:** I got a GED and did some college,  
5 junior college.

6                   **THE COURT:** Okay. Are you currently under the  
7 influence of any alcohol, drugs or medication?

8                   **THE DEFENDANT:** No, Your Honor.

9                   **THE COURT:** Are you suffering from any illness or  
10 medical problem, either physical or mental?

11                  **THE DEFENDANT:** Yes, Your Honor. I have depression,  
12 anxiety and suffer from PTS -- Post-Traumatic Syndrome, and  
13 just generally taking care of my 88-year-old mother and my  
14 special needs 67-year-old brother so I have a plate full.

15                  **THE COURT:** Okay. Well, let me first back up a  
16 little bit. Are you taking any medication for any of those  
17 conditions?

18                  **THE DEFENDANT:** Yes, ma'am.

19                  **THE COURT:** Okay. Is there anything about the  
20 medication that you're taking that makes it difficult for you  
21 to understand what's happening here today?

22                  **THE DEFENDANT:** Oh, no, ma'am. No, Your Honor.

23                  **THE COURT:** Okay. And with respect to the conditions  
24 themselves, is there anything about those conditions that make  
25 it difficult for you to understand what's happening here today?

1                   **THE DEFENDANT:** Oh, no, Your Honor.

2                   **THE COURT:** Okay. That's why I asked those  
3 questions, I just wanted --

4                   **THE DEFENDANT:** Well, I'm just trying to be as honest  
5 as I can.

6                   **THE COURT:** Yeah. No, I appreciate you're being  
7 straightforward with those responses. So I just want to make  
8 sure that you have understood all of my questions so far here  
9 today and you've understood everything you have discussed with  
10 your attorney in recent days?

11                  **THE DEFENDANT:** Oh, yes, ma'am, I'm clear-minded and  
12 even clear-headed.

13                  **THE COURT:** Okay, great. So it's my understanding  
14 that Mr. Barton will be pleading guilty to Count Three of the  
15 Indictment, is that correct?

16                  **MR. HURTADO:** Yes, ma'am.

17                  **MR. ENCINIAS:** Yes, that's correct, Your Honor.

18                  **THE COURT:** Okay. All right. So, Mr. Barton, before  
19 you can go forward with your guilty plea, and if you go forward  
20 with your guilty plea you will be giving up a number of very  
21 important rights and we need to go over those with you.

22                  First and most importantly, you will be giving up  
23 your right to a jury trial. At a jury trial you would have the  
24 right to representation by your attorney. Your attorney would  
25 help you at every stage leading up to trial. He would work

1 with you to prepare for trial and would be with you throughout  
2 your trial. If you cannot afford to hire an attorney you would  
3 have the right to a court-appointed attorney both at your trial  
4 and at every other stage of the proceeding.

5 At a trial you would have the right to confront the  
6 witnesses against you and to have your attorney cross examine  
7 those witnesses under oath.

8 You also would have the right to present evidence, to  
9 testify yourself, and to compel witnesses to come to court to  
10 testify on your behalf.

11 You also would have the right to remain silent,  
12 including the right not to testify at your trial. It would be  
13 your decision whether to testify or not, and if you chose not  
14 to testify the Government could not use your silence against  
15 you.

16 You would be presumed innocent. It would be the  
17 Government's burden to convince all 12 people on your jury that  
18 you are guilty beyond a reasonable doubt. However, if you  
19 plead guilty here today there will be no trial and you will be  
20 giving up all of the rights that I have just described. Do you  
21 understand that?

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** And are you willing to give up those  
24 rights?

25 **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** All right. Now there are other important  
2 consequences of entering a guilty plea. If you are a citizen  
3 of the United States you will lose valuable civil rights such  
4 as the right to vote, the right to hold public office, the  
5 right to serve as a juror and the right to possess a firearm  
6 and ammunition.

7                   Mr. Barton, are you a citizen of any other country?

8                   **THE DEFENDANT:** No, Your Honor.

9                   **THE COURT:** All right. Then, also, if you plead  
10 guilty here today you will have what's called a criminal  
11 history. That means if you are ever convicted of any other  
12 crime in the future you likely would receive harsher punishment  
13 for that crime as a result of your guilty plea here today. Do  
14 you understand the consequences I have just gone over?

15                   **THE DEFENDANT:** Yes, Your Honor, I do.

16                   **THE COURT:** Okay. And, Mr. Barton, I should have  
17 mentioned this earlier, but I'll mention it now. If at any  
18 point during this hearing you have any questions for me just  
19 feel free to ask me. But also if you have any questions for  
20 your attorney or if you would like to speak with your attorney  
21 privately we can put you in a room together, a virtual room  
22 together, if you would like to speak to him privately, okay?  
23 Do you understand?

24                   **THE DEFENDANT:** Yes, Your Honor, I understand.

25                   **THE COURT:** Okay. Now, as I mentioned, you are

1 planning to plead guilty to Count Three of the Indictment, and  
2 first let me ask you, have you received a copy of the  
3 Indictment that contains Count Three?

4 **THE DEFENDANT:** Yes, Your Honor.

5 **THE COURT:** Have you had a chance to read Count Three  
6 and go over it with your attorney?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** All right. So Count Three charges you  
9 with a violation of 18 United States Code Section 871, which is  
10 "threats against the President and successors to the  
11 presidency."

12 Do you understand the charge to which you will be  
13 pleading guilty?

14 **THE DEFENDANT:** Yes, Your Honor, I do.

15 **THE COURT:** All right. Now I'm going to show you a  
16 portion of your Plea Agreement, I just want to draw your  
17 attention to this. This part of the Plea Agreement appears on  
18 Page 3, I'm going to share it with you, it's on my screen, now  
19 it's going to pop up on your screen. This is the provision  
20 that is entitled "Elements of the Offense." Do you see it  
21 there on the screen in front of you?

22 **THE DEFENDANT:** Yes, Your Honor.

23 **THE COURT:** And this particular provision lists the  
24 three things that the Government would have to prove beyond a  
25 reasonable doubt for you to be found guilty of this offense.

1 Do you understand what it is the Government would have to prove  
2 for you to be found guilty?

3 **THE DEFENDANT:** Yes, Your Honor, I do.

4 **THE COURT:** All right. Mr. Hurtado, could you please  
5 tell us what the potential penalties are on this charge?

6 **MR. HURTADO:** Yes, ma'am. The penalties are as  
7 follows: imprisonment for a period of not more than five  
8 years; a fine not greater than \$250,000; a term of supervised  
9 release of not more than three years; a mandatory special  
10 penalty assessment of \$100 and restitution as may be ordered by  
11 the Court and that would constitute the sum of penalties.

12 **THE COURT:** All right. Do you understand,  
13 Mr. Barton, that those are the potential penalties that you  
14 face?

15 **THE DEFENDANT:** Yes, Your Honor, I do.

16 **THE COURT:** All right. Let me -- I want to talk with  
17 you for a moment about the Sentencing Guidelines and how they  
18 work.

19 The District Judge who will sentence you will be  
20 Judge Riggs and she will be required to calculate your  
21 particular Sentencing Guideline range.

22 She then must consider that range and any possible  
23 departures. She also must consider a number of other factors,  
24 many of which are listed under 18 United States Code, Section  
25 3553(a). And although Judge Riggs is required to consider your

1 Sentencing Guideline range she is not bound by that range.

2 Now, have you talked with Mr. Encinias about the  
3 Sentencing Guidelines and how they might apply in your  
4 particular case?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** And has he explained to you that the  
7 Guidelines are not binding and that Judge Riggs could decide  
8 that you should get more or less of a sentence than the  
9 Guidelines recommend?

10 **THE DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** All right. So I do know that you have a  
12 Plea Agreement with the Government, we have already talked  
13 about that a little bit. I'm going to show you the last page  
14 of that Plea Agreement which should pop up on the screen there  
15 in front of you.

16 The last page of this Plea Agreement, do you see that  
17 there on the screen in front of you, Mr. Barton?

18 **THE DEFENDANT:** Yes, Your Honor, I do.

19 **THE COURT:** Above your printed name is a signature.  
20 Is that your signature?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** Now before you signed this Plea Agreement  
23 did you go -- did you read through the entire Plea Agreement  
24 and go over it with your attorney?

25 **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** Did your attorney explain the Plea  
2 Agreement to you and answer all of your questions to your  
3 satisfaction before you signed it?

4                   **THE DEFENDANT:** Yes, Your Honor.

5                   **THE COURT:** Do you understand each and every term of  
6 your Plea Agreement?

7                   **THE DEFENDANT:** Yes, Your Honor, I do.

8                   **THE COURT:** All right. I'm going to go over certain  
9 aspects of this Plea Agreement with you so this is the first  
10 thing I'm going to start with.

11                  At Paragraph 10, Page 4 of your Plea Agreement  
12 there's a -- and it continues onto Page 5, there's a provision  
13 there that's entitled "Recommendations" and this particular  
14 provision essentially is an agreement between you and the  
15 Government about how the Sentencing Guidelines should apply in  
16 your case, but these recommendations are not binding on the  
17 District Judge, do you understand that?

18                  **THE DEFENDANT:** Yes, ma'am. Yes, Your Honor.

19                  **THE COURT:** And so it's possible that you could get  
20 to sentencing and Judge Riggs could say "Look, I understand  
21 that you have this agreement with the Government, but I am not  
22 going to accept some or all of these Recommendations," but at  
23 that point you would not be able to withdraw your guilty plea,  
24 do you understand that?

25                  **THE DEFENDANT:** Yes, Your Honor, I do.

1                   **THE COURT:** It's also possible you could get to  
2 sentencing and Judge Riggs could tell you, even if she accepts  
3 all of these Recommendations, it's possible that she could  
4 impose a sentence that is harsher in some ways than the  
5 sentence you anticipate, but at that point you would not be  
6 able to withdraw your guilty plea. Do you understand that?

7                   **THE DEFENDANT:** Yes, Your Honor.

8                   **THE COURT:** Okay. And then, finally, it's totally  
9 appropriate for Mr. Encinias to give you his best estimate of  
10 what the Sentencing Guidelines are likely to be, but I want to  
11 make sure that you understand that when you get to sentencing  
12 if Mr. Encinias's estimate is incorrect or Judge Riggs finds a  
13 different range is applicable, at that point you would not be  
14 able to withdraw your guilty plea, do you understand that?

15                  **THE DEFENDANT:** Yes, Your Honor, I do.

16                  **THE COURT:** Okay. And, I'm sorry, there's one other  
17 thing in your Plea Agreement that I wanted to talk about at  
18 this point. There's this provision, again, I'm going to show  
19 it on your screen, at Paragraph 17(a) it's called "Government's  
20 Additional Agreement," do you see that there in front of you?

21                  **THE DEFENDANT:** Yes, ma'am. Yes, Your Honor.

22                  **THE COURT:** And this says that:

23                   "Following sentencing the Government will move to  
24 dismiss Counts One, Two, Four and Five of the  
25 Indictment."

1                   Do you see that?

2                   **THE DEFENDANT:** Yes, ma'am. Yes, Your Honor.

3                   **THE COURT:** Now if, for some reason, the Government  
4 failed to make that Motion or Judge Riggs refused to grant it  
5 at that point you would be able to withdraw your guilty plea,  
6 do you understand that?

7                   **THE DEFENDANT:** Yes, Your Honor.

8                   **THE COURT:** All right. So let me ask you,  
9 Mr. Barton, have you talked with your attorney about all of the  
10 facts and circumstances of your case?

11                  **THE DEFENDANT:** Yes, Your Honor.

12                  **THE COURT:** Have you gone over what the Government  
13 would have to prove for you to be found guilty beyond a  
14 reasonable doubt?

15                  **THE DEFENDANT:** Yes, Your Honor.

16                  **THE COURT:** Have you gone over the Government's  
17 evidence and the discovery that the Prosecutor provided?

18                  **THE DEFENDANT:** Yes, Your Honor.

19                  **THE COURT:** Have you talked about possible defenses  
20 with Mr. Encinias?

21                  **THE DEFENDANT:** Yes, Your Honor.

22                  **THE COURT:** Have you had enough time with your  
23 attorney to discuss your case?

24                  **THE DEFENDANT:** Yes, Your Honor.

25                  **THE COURT:** Has he answered all of your questions to

1 your satisfaction?

2                   **THE DEFENDANT:** Yes, Your Honor.

3                   **THE COURT:** And are you satisfied with his advice and  
4 representation?

5                   **THE DEFENDANT:** Absolutely, Your Honor.

6                   **THE COURT:** All right. Let me draw your attention  
7 now to Page 7 of your Plea Agreement and I'll show it to you on  
8 my screen. You should see it there on your screen as Paragraph  
9 16. This is a provision entitled "Waiver of Appeal Rights."  
10 Do you see that there on the screen in front of you?

11                   **THE DEFENDANT:** Yes, Your Honor.

12                   **THE COURT:** So this particular provision says that:

13                   "You are giving up your right to appeal your  
14 conviction and any sentence including any fine that  
15 is at or under the statutory maximum penalty  
16 authorized by law, as well as any sentence imposed  
17 below or within the Guideline range upon the  
18 revocation of supervised release."

19                   Do you understand the appellate rights that you are  
20 giving up?

21                   **THE DEFENDANT:** Yes, Your Honor.

22                   **THE COURT:** This also says that:

23                   "You are giving up your right to collaterally attack  
24 your conviction and any sentence, including any  
25 fines, except on the issue of your counsel's

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

10 | **THE DEFENDANT:** Yes, Your Honor.

11                   **THE COURT:** Paragraph 8 is basically -- it states  
12 what it is you did that makes you guilty of this offense. Do  
13 you see that there in front of you?

19                   **THE COURT:** Did you have the opportunity to correct  
20 anything that was either inaccurate or untrue?

21 | **THE DEFENDANT:** Yes, Your Honor.

22                   **THE COURT:** Do you agree that all of the facts  
23 contained in Paragraph 8 of your Plea Agreement are true and  
24 correct?

25 | **THE DEFENDANT:** Yes, Your Honor.

1                   **THE COURT:** Do you also agree that if your case were  
2 to go to trial that the Government would be able to prove these  
3 facts beyond a reasonable doubt?

4                   **THE DEFENDANT:** Yes, Your Honor.

5                   **THE COURT:** All right. Mr. Barton, are you pleading  
6 guilty here today because you are, in fact, guilty --

7                   **THE DEFENDANT:** I am, Your Honor --

8                   **THE COURT:** I'm sorry?

9                   **THE DEFENDANT:** Yes, ma'am -- yes, I am, Your Honor.

10                  **THE COURT:** All right. And then, Mr. Encinias, are  
11 you satisfied that pleading guilty is in the best interests of  
12 your client?

13                  **MR. ENCINIAS:** I am satisfied, Your Honor.

14                  **THE COURT:** Mr. Barton, is anybody forcing you or has  
15 anybody threatened you to get you to plead guilty here today?

16                  **THE DEFENDANT:** No, Your Honor.

17                  **THE COURT:** Has anyone made any promises to you to  
18 get you to plead guilty that are not contained in your Plea  
19 Agreement or any Addendum to the Plea Agreement?

20                  **THE DEFENDANT:** No, Your Honor.

21                  **THE COURT:** Have you understood everything I have  
22 explained to you and all of my questions?

23                  **THE DEFENDANT:** Yes, Your Honor.

24                  **THE COURT:** Do you have any questions for either me  
25 or your attorney before we go forward?

1                   **THE DEFENDANT:** No, Your Honor.

2                   **THE COURT:** All right, Mr. Barton, how do you plead  
3 to the felony charge of making threats against the President  
4 and successors to the presidency as alleged in Count Three of  
5 the Indictment, guilty or not guilty?

6                   **THE DEFENDANT:** Guilty, Your Honor.

7                   **THE COURT:** All right, Mr. Barton, I find that you  
8 are competent and capable of entering an informed plea; that  
9 you are aware of the nature of the charge against you and the  
10 consequences of your plea; and that your plea is knowing and  
11 voluntary and supported by sufficient facts.

12                  I, therefore, accept your plea and I now adjudge you  
13 guilty. I will defer acceptance of the Plea Agreement to the  
14 District Judge.

15                  Now because we're doing this by video I will ask the  
16 attorneys if they have any objections or concerns about the way  
17 I have conducted this Plea hearing and I'll start with you,  
18 Mr. Hurtado?

19                  **MR. HURTADO:** Your Honor, I would respectfully ask  
20 the Court to inquire of Defense Counsel that Mr. Barton is  
21 competent to proceed. I'd feel more comfortable if he said so  
22 based on the procedural history of this case. I know that the  
23 Court has previously requested that Mr. Barton submit to a  
24 psychological evaluation or a mental health assessment.

25                  **THE COURT:** Okay. Mr. Encinias, will you address

1 that concern, please?

2                   **MR. ENCINIAS:** I'll address the concern, and the  
3 psychological evaluation was actually a continuance of an  
4 evaluation with them when he was out of custody in Farmington,  
5 it was not a competency evaluation. I have assessed whether or  
6 not there is a possibility of raising competency in this case,  
7 and I do in every case that has the kind of history that  
8 Mr. Barton has, and I will assure the Court that I do not  
9 believe that there is a competency issue in this case, I  
10 believe that Mr. Barton is competent.

11                   **THE COURT:** Okay, so that psychological evaluation  
12 was not ordered on the issue of competency, is that correct?

13                   **MR. ENCINIAS:** No, it wasn't ordered on the issue of  
14 competency and it wasn't ordered by the Court, it was something  
15 that Probation requested.

16                   **THE COURT:** Okay. And I will also say, Mr. Hurtado,  
17 that I have interacted with Mr. Barton on video, obviously,  
18 several times during the course of this litigation and at every  
19 point he has responded appropriately to questions, he certainly  
20 appears to understand the nature of the proceedings and  
21 everything we have discussed, and he's behaved in a manner that  
22 makes it certainly seem to me that he understands everything  
23 that's going on, and that he certainly was competent to  
24 proceed. Actually, even more than that, he's an intelligent  
25 individual so --

1                   **THE DEFENDANT:** Thank you.

2                   **THE COURT:** So, Mr. Encinias, let me ask you, and let  
3 me ask you, Mr. Hurtado, has that addressed your concern?

4                   **MR. HURTADO:** Yes, ma'am, it has. Thank you.

5                   **THE COURT:** All right. So let me ask you,  
6 Mr. Encinias, do you have any objections or concerns as to the  
7 way I have conducted this Plea hearing?

8                   **MR. ENCINIAS:** I have none, Your Honor.

9                   **THE COURT:** All right. So I assume I should order a  
10 regular Presentence Report in this case?

11                  **MR. ENCINIAS:** Your Honor, I would ask for an  
12 expedited Presentence Report. While his Guidelines are low he  
13 does have some -- he has been in three months and there is  
14 always a possibility, given the fact that he has variance --  
15 real strong variance issues, and I believe that there is a  
16 possibility of a time served sentence in this case and I would  
17 ask, again, for an expedited PSR.

18                  **THE COURT:** Well, the issue with an expedited PSR  
19 that means that he would not be interviewed. It seems like it  
20 might be to his benefit to be interviewed. I mean, I could ask  
21 Probation to try to do it more quickly than normal, but --

22                  **MR. ENCINIAS:** No, if the Court is concerned about  
23 that then I would ask the Court to ask Probation to do it  
24 quickly.

25                  Recently there have been -- my experience has been

1 recently we've been doing them a lot more quickly than we had  
2 in the past and I would hope that would be the case in this  
3 situation.

4                   **THE COURT:** Okay. So I will order a regular  
5 Presentence Report. I will request that the Probation Office,  
6 though, do it as quickly as possible because Mr. Barton is  
7 facing a sentence that's probably on the lower end. We don't  
8 want him to get to the point where he is serving more time than  
9 is necessary.

10                  And, Mr. Encinias, I would ask you to coordinate with  
11 the Probation Office to try to get him interviewed as quickly  
12 as possible, but it does seem like it might be in Mr. Barton's  
13 best interests to have that interview and to have a full  
14 Presentence Report other than an expedited one, so I'll order  
15 -- I mean, rather than the sort of shortened one that comes  
16 along with an expedited Presentence Report.

17                  So, Mr. Barton, that means that you will be  
18 interviewed in conjunction with the preparation of the report.  
19 Once the interview is complete, which hopefully will be done  
20 quickly, then the Probation Officer will incorporate  
21 information from the interview into the Presentence Report,  
22 along with a lot of other information about you and your  
23 background and this particular offense. The report then will  
24 be completed. I'm asking that it be done as quickly as  
25 possible. My guess is that it will take at least 30 days, but

1 the outer limit will be 75 days. An expedited report typically  
2 takes 30 days so, you know, I'm asking that they do it as  
3 quickly as possible.

4                   Once you receive the report, once it's completed it  
5 will be given to your attorney, the Prosecutor and the District  
6 Judge. Then you will have the opportunity to object to  
7 anything in the report you believe is incorrect, but ultimately  
8 the District Judge will rely on the report to assist her in  
9 determining what the appropriate sentence is in your case.

10                  **THE DEFENDANT:** Thank you.

11                  **THE COURT:** All right, is there anything else we need  
12 to take up this afternoon in this case, Mr. Encinias?

13                  **MR. ENCINIAS:** No, Your Honor.

14                  **THE COURT:** Mr. Hurtado, do you have anything  
15 further?

16                  **MR. HURTADO:** No, ma'am, thank you.

17                  **THE COURT:** All right. Well, thank you all very much  
18 for your patience.

19                  Mr. Barton, I do wish you the best of luck and thank  
20 you for your patience in being the last person on the docket  
21 here today, okay?

22                  **THE DEFENDANT:** Thank you for fitting me in, Your  
23 Honor. Thank you very much. God bless you.

24                  **THE COURT:** All right, thank you.

25                  (**This proceeding was adjourned at 12:39 p.m.**)

**CERTIFICATION**

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



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**Signed**

**March 17, 2021**

**Dated**

***TONI HUDSON, TRANSCRIBER***